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OF A FIRM AND LASTING PEACE AND
PROGRESS IN FASHIONING A REGION
OF PEACE, FREEDOM, DEMOCRACY AND
DEVELOPMENT

SECURITY COUNCIL
Fiftieth year

Note by the Secretary-General

The attached document contains the thirteenth report of the Director of the Human Rights Division of the United Nations Observer Mission in El Salvador (ONUSAL), covering the period from 1 October 1994 to 31 March 1995. As will be recalled (see S/23999, para. 3), it was decided that the work of ONUSAL in relation to the San José Agreement on Human Rights (A/44/971-S/21541, annex) would be the subject of a separate series of reports. This report will be the final report of the Human Rights Division of ONUSAL, as the latter's mandate will end on 30 April 1995, in accordance with Security Council resolution 961 (1994) of 23 November 1994.

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ANNEX

Thirteenth report of the Director of the Human Rights Division of the United Nations Observer Mission in El Salvador (ONUSAL)

1 October 1994 to 31 March 1995

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I. INTRODUCTION

1. The purpose of this report is to inform the Secretary-General, and through him the Security Council and the General Assembly, about the development of human rights protection mechanisms in El Salvador and about the status of implementation of the agreements concerning respect for and protection of human rights during the final phase of the United Nations Observer Mission in El Salvador (ONUSAL) in the country. It also wraps up the international verification of human rights in the context of the peace-keeping operation, although this may continue through the new verification and good offices mechanism which the Secretary-General has proposed (S/1995/220, para. 82). Moreover, since this is the final report of the Human Rights Division, it includes a brief overview of institutional developments and a list of actions to which priority should be given in the future in order to comply fully with the human rights obligations deriving from the peace agreements.

2. The Human Rights Division has repeatedly pointed out that effective enjoyment of human rights in El Salvador depends primarily on strengthening the national institutions that are responsible, directly or indirectly, for protecting and defending those rights. In particular, it depends on the proper functioning of the institutional framework provided for in the peace agreements to ensure that the State's activities in respect of human rights are, indeed, in keeping with the law.

3. In that connection, in his twelfth report to the Secretary-General, the last which he submitted in his capacity as Director of the Human Rights Division, Mr. Diego García-Sayán pointed out that "Although this process is incomplete, it is advancing in the right direction" (A/49/585-S/1994/1220, para. 6). Based on this perception, the Human Rights Division, which from November 1994 has been headed by Mr. Reed Brody (United States of America), has continued to provide its support to the national institutions which are moving ahead in accordance with the guidelines set forth in the peace agreements, but which are still encountering considerable difficulties in their process of consolidation.

4. At the same time, since ONUSAL will be withdrawing on 30 April 1995, the Human Rights Division has been emphasizing the urgent need to implement those parts of the peace agreements concerning human rights which are still pending, a matter which is of the utmost importance if El Salvador is to complete the framework of legal and institutional safeguards required in order to achieve democracy and lasting peace.

5. This emphasis in the Human Rights Division's verification has been complemented by the permanent monitoring of individual complaints received by the Office of the National Counsel for the Defence of Human Rights. ONUSAL has continued to assist with the acceptance and investigation of complaints filed with the Office. Since December 1994, direct verification of complaints involving individual cases has, for ONUSAL, been the exception rather than the rule.

6. During the six months covered by this report, the trend towards improvement in the human rights situation that was noted in the twelfth report has been confirmed. It is encouraging to see that there have been few complaints of politically motivated violations of human rights. This substantive change in the overall human rights situation prompted the United Nations Commission on Human Rights, at its forty-ninth session in March 1995, to decide, after 14 years of close scrutiny, that the mandate of its Independent Expert for El Salvador 1/ could be terminated.

7. However, the increase in ordinary crime which is responsible for the population's continued feeling of great insecurity, the persistence of organized violence in the country and the strong reaction on the part of some social sectors, in some cases, to delays in the implementation of the outstanding peace agreements, have all underscored the need to work harder to fulfil the commitments deriving from the agreements and to build up all the institutions emerging therefrom so that the State is in a position to guarantee unrestricted respect for human rights. In particular, there is an urgent need to accelerate the modernization and purification of the judiciary and to strengthen the investigative capacity of the National Civil Police (PNC) in order to combat the principal source of human rights violations, namely, impunity.

8. One of the most serious incidents during the period under review was the murder, on 10 November, of Fuerzas Populares de Liberación (FPL)-Frente Farabundo Martí para la Liberación Nacional (FMLN) leader David Fausto Merino Ramírez ("Franco"), in an attack in which Pablo Parada Andino, a member of the FPL Central Committee, and Carlos Hernández Cortez were also wounded. Although the facts have not been clarified, there are a number of indications that the crime may have been politically motivated.

II. INSTITUTION-BUILDING

9. During the period covered by this report, real progress was made in the process of consolidating the institutions involved in the defence and protection of human rights, the major developments being: the starting by the Supreme Court of Justice of the process of purification of the judiciary, the completion of the deployment of the National Civil Police and of the dissolution of the National Police, the country's accession to important international human rights conventions and also the recognition of the competence of the Inter-American Court of Human Rights. Similarly, in March 1995, Ms. Victoria Marina de Avilés, a legal expert recognized for her commitment to human rights, was elected National Counsel for the Defence of Human Rights by a large majority of the Legislative Assembly. Currently, the major hurdles to fulfilling the human rights commitments deriving from the peace agreements are the slow pace of legislative reform and the as yet incomplete consolidation of the PNC.

1. The Office of the National Counsel for the Defence of Human Rights

10. The Office of the National Counsel for the Defence of Human Rights is one of the most important institutions created by the peace agreements. Its function is crucial to the consolidation of democracy and the eradication of impunity in El Salvador.

11. In its early phases, the Office had to confront a number of difficulties. These included not having a budget sufficient for its needs, inadequate support from the Government and the failure to move vigorously from the start to develop an efficient system for the investigation and protection of human rights. These, combined with the extreme caution shown by the Office, at the outset, in starting to wield its constitutional and legal powers and establish frameworks of cooperation with non-governmental organizations and with ONUSAL itself, slowed the consolidation of this institution. Nevertheless, the Office has gradually been strengthening its infrastructure and expanding its coverage of the country.

12. During the period covered by this report, the Office completed its territorial deployment and now has 14 branches throughout the country. As a result of this and of the human rights education and promotion campaigns which it has been conducting since it was established three years ago and, more recently, the publication of periodic reports and reviews, the Office is beginning to make its presence felt and to inform the population about its functions; this, in turn, has increased public demand for its services.

13. ONUSAL has continued to assist the Office's efforts, providing support in various areas of human rights protection and making its human, technical and logistical resources available to the Office on a continuing basis. Cooperation between ONUSAL and the Office is centred on a programme of ongoing technical assistance covering the areas of acceptance, legal characterization and investigation of cases or situations that may constitute violations of human rights, with emphasis being placed on those categories of rights where the mandate of the two institutions overlap.

14. In view of the fact that ONUSAL would soon be withdrawing from El Salvador, starting in July 1994 cooperation was intensified and a joint verification mechanism was established. This has made it possible for ONUSAL to help strengthen the Office's system of protection while the latter gradually takes over the case-load and situations which ONUSAL had been handling during its stay in the country. In order to develop this joint verification mechanism, ONUSAL assigned legal and police officials on a permanent basis to assist the Office in matters relating to the acceptance and investigation of cases and in order to increase technical support to branches in the departments. This joint verification has, in turn, enabled ONUSAL, while reducing its strength, to continue its permanent monitoring of the human rights situation in the country through the support provided by all branches of the Office in dealing with reported cases and in obtaining statistical data.

15. At the same time, in close coordination with a project to strengthen the system of protection, carried out with the cooperation of the United Nations

Development Programme, the Human Rights Division has helped to organize training courses on methods of legal characterization of human rights violations, police and judicial investigation of human rights violations, methods and procedures used in verification of the prison system and methods and procedures used in verification of the actions of the National Civil Police. Cooperation has extended from these workshops to the participation of ONUSAL legal and police personnel in the preparation of a series of handbooks which the Office, through the aforesaid project, is planning to draw up for its system of supervision. The Division has also assisted in the review and updating of the system of characterization used by the institution for the acceptance, characterization, investigation and resolution of cases or situations that might constitute violations of human rights.

16. These joint activities have been carried out for the purpose of assisting in the execution of the institutional policies which the Office adopted in its initial phase, and they complement the efforts which that institution has been making to guarantee the efficacy of its constitutional responsibilities, namely, to protect human rights and monitor the legality of public administration. In the light of the election of Ms. de Avilés - an encouraging development - it is possible to suggest a series of actions which the Office should undertake in order to consolidate its system of protection, particularly now that ONUSAL is withdrawing from the country.

17. In the first place, the Office must review and consolidate the system for the preparation, widespread public dissemination and follow-up of its resolutions. This is crucial to the protection of human rights. The system must therefore be reviewed and updated so that resolutions are of the highest technical quality, carry proper moral weight and have the proper deterrent effect, are carried out with the swiftness required in order to protect and compensate the victims and are respected and implemented promptly by the relevant bodies. ONUSAL has noted with concern that the overwhelming majority of resolutions issued by the National Counsel have been ignored by the authorities concerned.

18. Another aspect which needs improvement is coordination between the Office of the National Counsel in San Salvador and its departmental branches. ONUSAL has noted that, since there are no precise instructions and guidelines, in many cases the various branches do not use uniform criteria in carrying out their activities; this has created uncertainty in those branches and has led to inaction or excessive delays, all of which is detrimental to protection. One common effect of this lack of coordination is that departmental branches do not know what happens to the draft resolutions which they prepare, once these are sent to headquarters, and are therefore unable to follow up on them.

19. One of the most important qualities which must characterize the Office's work is the speed of the service it provides to victims, in order to minimize the effects of the violation and ensure that measures of reparation are timely. Accordingly, it would also be advisable for the Office to review its working hours and shifts to ensure that the quality of its services is in no way affected by public holidays, weekends or vacations.

20. In the recent past, El Salvador has witnessed a number of public demonstrations which have generated tension. Given the political and economic transformations which the country has been undergoing, these actions can be expected to recur, and they may not always be peaceful. For this reason, the Office must have a clear intervention strategy that will enable it to help resolve these situations promptly and fairly. It would therefore be wise for the Office to devise a policy, consistent with its constitutional mandate, for handling crisis situations and for using its good offices, thereby equipping itself with broader prevention powers that go beyond the humanitarian assistance actions it has hitherto been carrying out.

21. Consolidation of the institutional and legislative reforms emanating from the peace agreements is another aspect that concerns the Office. It would be a good idea, in this connection, if the Office were to be more vigorous in promoting reforms and expressing opinions on draft bills, particularly now when it is necessary not only to expedite the reforms that are already under way but also to ensure that these reforms are consistent with the norms of national and international human rights law.

22. A large number of shortcomings which affect the Office's work stem from a lack of human and logistical resources, and this problem is particularly acute in the departmental branches. The Office now has branches in all the departmental capitals, and its territorial deployment can therefore be considered complete. However, this initial phase must be followed by a phase of consolidation, during which it is vital to have competent personnel and to provide the branches with sufficient and appropriate means, and this makes it essential to obtain greater financial resources. The Human Rights Division has pointed out repeatedly that the Government bears a great deal of responsibility for this and, given the inadequacy of the budgetary resources allocated, has also urged the international donor community to continue to help build up the Office.

23. It would be advisable for the Office to develop its investigative capacities still further by obtaining greater technical resources and providing its personnel with further training in matters pertaining to the law and criminal investigations. This would also, as the Joint Group for the Investigation of Politically Motivated Illegal Armed Groups has recommended, help the Office to verify police action and to monitor the legality of the activities of bodies responsible for the investigation of crime.

24. The Office must also begin to exercise its authority to file for legal remedies and be more determined in the study and analysis of special situations that affect, or might affect, the effective exercise of human rights, so as to have more facts at its disposal when taking decisions on such matters. In the present circumstances, this could mean, as a first step, considering the more drastic penalties being proposed in the country, particularly the proposal to introduce the death penalty. It would also be advisable for the Office to provide its staff with training in public security, including aspects relating to the constitutional functions of the armed forces, the operation of the National Civil Police and its relationship to the institutions for the administration of justice, and police conduct in crisis situations. Another

area that deserves attention at the present time is labour rights in the country's customs-free zones.

25. It would also be advisable for the Office to establish closer ties with a number of institutions of civil society which have repeatedly expressed a willingness to support and encourage its work. In particular, El Salvador has a large number of non-governmental organizations which traditionally have been involved in defending human rights. Some of them have been adapting their work to the requirements of the new situation in El Salvador and they are in a position to cooperate with the Office in its functions of supervision and protection.

2. Public security

26. One of the most important transformations sought by the peace agreements was a change in the relationship between the security forces and the population, so that the repression and fear of the past could give way to a public perception of security and trust. Public security is therefore one of the central themes of the peace agreements to be verified by the Mission; furthermore, respect for and the protection of human rights depends to a considerable extent on all aspects of public security being dealt with properly.

27. ONUSAL has verified respect for and the protection of human rights in the administration of public security by monitoring compliance with the new public security doctrine established by the peace agreements, supervising the development and institutional consolidation of the National Civil Police (PNC) as El Salvador's sole police force with nationwide responsibility for preserving internal law and order and verifying individual cases of alleged human rights violations committed by members of the police.

28. The administration of public security in countries in transition to democracy is generally fraught with contradiction and complexity. For El Salvador, one of the greatest challenges is to find immediate solutions to the pressing needs created by the increase in both ordinary and organized crime since the end of the armed conflict while pursuing the unavoidable task of fulfilling the commitment to redefine and put into practice a new public security doctrine with programmatic elements.

29. This new doctrine entailed the implementation of reforms in the armed forces, designed essentially to eliminate public security tasks from their normal sphere of competence and responsibilities and to concentrate their sphere of action on the defence of State sovereignty and territorial integrity. The aim was to guarantee that the armed forces would be impartial, apolitical and subordinate to civilian authority. It was also stipulated that the armed forces should be purified, their numbers reduced and their training system completely overhauled.

30. The new public security doctrine also entailed the abolition of the old security forces (National Guard, Treasury Police and National Police), which were controlled by the Ministry of Defence, received military training and were used for exercising military control over the population.

31. The transfer of command from the National Police to the National Civil Police took place on 12 January 1995. This event was of great importance for the peace process, since it marked the fulfilment of the Government's commitment to give the National Civil Police exclusive responsibility for internal public security. The final disbanding of the National Police also means that, for the first time in the history of El Salvador, internal public security has been entrusted to a single police force, consisting mainly of civilian personnel, with new officers and trained entirely at the new National Public Security Academy. It has also been decided that former members of the Anti-Crime Squad will shortly be enrolled in basic courses at the National Public Security Academy (ANSP). Between 16 and 18 March, members of the Squad carried out an operation in the city of Jiquilisco which prompted a number of complaints of ill-treatment and arbitrary arrest.

32. Progress has been made in implementing the recommendations made by ONUSAL in July 1994 for correcting irregularities observed in the PNC and for improving the functioning of the National Public Security Academy. In particular, steps have been taken to reduce the undue weight in the PNC structure of members of the former Special Anti-Narcotics Unit (UEA) and the former Commission for the Investigation of Criminal Acts (CIHD), who had been directly transferred en bloc to the Anti-Narcotics and Criminal Investigation Divisions of the National Civil Police. These officials have still to be enrolled in the Academy's regular courses at the level corresponding to their academic qualifications and length of service.

33. The implementation of all these reforms has a qualitative dimension which is evolving more slowly than crime and other occurrences which require the intervention of the State in order to safeguard law and order and public tranquillity. However, it is essential that solutions to public security problems be designed and implemented within the framework of the peace agreements. The ninth report of the Human Rights Division, issued in September 1993, emphasized that the increase in crime was linked to non-implementation or delayed or incomplete implementation of the agreements: "[Firstly], the failure to confiscate military weapons in the hands of the civilian population ... Secondly, [...] the difficulties, shortcomings and delays in ... the efficient deployment of the National Civil Police, with sufficient resources to fight crime. And, thirdly, ... the limitations of the process of reintegrating former members of both the armed forces and FMLN. To that should be added the still-evident failure to investigate crime which contributes to a sense of impunity." (A/49/59-S/1994/47, para. 72). During the period covered by this report, ONUSAL noted a number of decisions on the issue of law and order and certain PNC actions which were not strictly in accordance with the peace agreements.

2.1 Deployment of the armed forces for public security tasks

34. I have to express my concern at the use of the armed forces for public security tasks during the period covered by this report.

35. The Constitution of El Salvador, amended pursuant to the peace agreements, gives the President of the Republic the power to use the armed forces for the

maintenance of domestic peace, tranquillity, order and public safety "in exceptional cases, where the normal means [for that purpose] have been exhausted". Such action "shall be limited to the period and extent strictly necessary to restore order and shall cease once that task has been fulfilled" (art. 168, para. 12). A number of recent events have prompted the President to exercise that power.

36. On 14 November 1994, in the Department of San Miguel, a number of owners and drivers of public-service buses staged a protest by blocking the access roads to the city of San Miguel. The Government decided to use the armed forces to break up the demonstration, placing the National Civil Police under military command. There was a serious clash between demonstrators and members of the army and the National Civil Police, in which three people were killed and several injured. A number of people were arrested by PNC members and handed over to the military authorities without any justification.

37. More recently, in March 1995, the Government put into effect a public security plan for combating crime. The plan relies heavily on the participation of the armed forces, in coordination with the National Civil Police. It should be noted that although this measure is, in theory, based on the Constitution, the spirit of the peace agreements requires that it be subject to legal rules which establish expressly and restrictively the requirements and conditions which must be met before domestic peace, tranquillity, order or public safety can be considered to be endangered, in exceptional cases, and before the normal means for their preservation can be considered to have been exhausted.

38. The existence of such rules, which could also determine the limits of the authority of the armed forces and their subordination to the Office of the Director-General of the National Civil Police in such exceptional situations, would also avoid the danger that the Government's broad discretionary powers in the use of the armed forces might be used to justify their assignment to functions other than those laid down in the Constitution. Those functions were defined in negotiations between the parties to the peace agreements, following the experience of the armed conflict when the armed forces were used to control the population. I would again emphasize the possible incompatibility between functions proper to the armed forces and public security tasks.

2.2 Necessary reforms

39. The situation of public insecurity is causing some sectors to propose the adoption of solutions which would be regressive and contrary to the rights guaranteed in the peace agreements. It should be pointed out that the crime problem cannot be solved by Draconian laws; such a solution is not only simplistic but could also have an adverse effect on the country's democratization. The adoption of social policies such as the reintegration of former combatants, the broadening of educational and employment options for young people and the involvement of the whole population in production activities would be a more beneficial course of action.

40. It is also essential to strengthen the State's capacity to fight organized and politically-motivated crime. The Joint Group for the Investigation of

Politically Motivated Illegal Armed Groups made some recommendations on this score which have received scant attention from the Government. Firstly, it recommended strengthening police investigation mechanisms by setting up a special unit within the PNC to investigate such crimes. While the unit has been created, so far it has not begun to function effectively.

41. It was also recommended that a special procedure be adopted for handling this kind of case, through the appointment of designated or specific judges to try such cases. Some sectors of El Salvador's legal community have construed this recommendation as being intended to create so-called "faceless judges"; in reality, that is far from being the Joint Group's intention. The recommendation is currently under consideration by the Supreme Court of Justice. The Joint Group also recommended the temporary adoption of legislation permitting exemption from or reduction of criminal liability in exchange for important information that would help in investigating and solving organized or politically motivated crimes. No action has been taken on this recommendation.

2.3 Inter-agency coordination

42. It is also necessary to reiterate ONUSAL's concern at continuing serious lapses in coordination between the National Civil Police, the judiciary, the Office of the Attorney General of the Republic, the Office of the National Counsel for the Defence of Human Rights and the public defenders' department of the Chief State Counsel's office. At the initiative of ONUSAL and the Office of the National Counsel for the Defence of Human Rights, work has begun in the eastern part of the country and in the Department of Chalatenango on the establishment of committees to coordinate the work of the above agencies. The results have been positive and the experiment should be continued and extended to other regions.

43. Verification of 49 representative units of the National Civil Police during February and March 1995 revealed, among other shortcomings, that during a one-week period the PNC notified the competent judge of only 12 per cent of police actions initiated on the basis of tip-offs or complaints. The situation as regards notification of the Office of the Attorney General of the Republic is alarming: none of the verified units notified the Office of their actions. The same verification exercise revealed that only 20 per cent of all arrest warrants issued by the competent courts had been carried out by the PNC.

44. ONUSAL also observed that the great majority of arrests by the police take place without a warrant from the court: only 11 per cent of arrests are ordered by a judge. The remainder consist of arrests in flagrante delicto (66 per cent) or in a situation of quasi-flagrancy (arrested within 24 hours of the offence) (23 per cent). The latter situation, seen in the context of the current state of institutional development of the National Civil Police, appears to confirm that members of the police are applying the concept of flagrancy incorrectly.

45. Verification also revealed a lack of uniformity and fluctuations in the quality of the systems for recording police actions and investigations, as well as an absence of monitoring by police commanders of the manner in which official records are kept. Improper record-keeping has repercussions for the preparation

of the documentation sent to the judicial authorities. In many cases, legal requirements are not observed and this can result in the declaration of a mistrial.

2.4 The National Civil Police and public demonstrations

46. During the period covered by this report, the country witnessed a number of public demonstrations, some of which went beyond the limits of peaceful protest and tested the Government's ability to respond in a timely and coherent fashion and in a spirit of peace and respect for democratic legality. The prudence with which the Government handled most of these incidents, by opening channels for dialogue and seeking ways of reaching an understanding with the demonstrators, should be commended. Nevertheless, it must be said that those incidents also revealed some deficiencies of the National Civil Police in controlling public demonstrations and crisis situations.

47. On 24 January, demobilized soldiers staged a mass protest in San Salvador, in which they occupied several buildings, including the Legislative Assembly and the Armed Forces Social Security Institute (IPSFA), and blocked traffic on three of the country's main roads. As demonstrators approached the area around the National University, members of the National Civil Police opened fire with rifles, leaving Andrés Flores Mendéz fatally wounded. Three other injured persons stated that police fired their weapons into the air and then straight at them. The police version is that the demobilized soldiers attacked the police with machetes.

48. At other times during the day, the PNC acted prudently, although it was also clear that at the time it lacked sufficient material resources and training to cope with serious breaches of the peace. A group of approximately 1,000 former patrolmen and members of the civil defence forces blockaded the Pan-American Highway for a full day. First, a contingent of 150 policemen arrived on the scene. A few hours later, some 30 anti-riot police arrived. They remained at a distance of one kilometre and did not intervene. The next day, the demonstrators moved to the Ministry of Finance, where they occupied the premises and took control of the access gates. Also, on 24 January, some 350 former soldiers broke into the Legislative Assembly and the Supreme Court of Justice, occupying both public buildings and their environs, preventing people from entering and leaving and holding several Assembly members hostage. In both these cases, the National Civil Police maintained a prudent attitude of observation and did not intervene at any time.

49. On 27 January 1995, a group of approximately 300 demobilized members of the former security forces held a march to the Presidential Palace, during which there were several problems and clashes between demonstrators and the National Civil Police. Tensions reached their height when the demonstrators took three police officers hostage. Apparently, the taking of these hostages was the result of a lack of organization in the deployment of the police. Evidently, the number of police who found themselves in contact with the demonstrators was small and they did not know what attitude to take, since they were divided into groups and thus highly vulnerable.

50. A disturbing incident took place on 29 March, when the National Civil Police violently dispersed a demonstration of around 1,500 war wounded in San Salvador, some of whom were armed with scythes, stones and even a firearm. Although, on this occasion, the police used such non-lethal methods as tear gas and rubber bullets, the excessive zeal with which the National Civil Police broke up the demonstration was disproportionate to the desired objective. It must be said, however, that carrying weapons in a demonstration is contrary to the peaceful nature of this kind of action and reveals a desire for confrontation which should have no place in the context of national transformation.

51. Under similar conditions, the National Civil Police has performed its duties with professionalism, particularly when the population has managed to exercise its right of association and demonstration peacefully, a right which the National Civil Police has a legal mandate to protect. That was the case with a peaceful march organized on 14 December by peasants from the country's former conflict zones demanding fulfilment of the provisions of the peace agreement concerning land transfers. In this instance, the National Civil Police, working with the organizers of the march, established the conditions under which it could take place in an orderly and peaceful fashion. As a result of the police's course of action, the entire day's events passed without incident.

52. Above and beyond the question of the legality or illegality of the demonstrations that have been verified in the country, it is essential that the task of maintaining law and order be carried out in a manner consistent with the peace agreements. This must be achieved by strengthening the operational capacity of the PNC and by training its members to handle crisis situations in accordance with the criteria of proportionate and gradual use of force set forth in police regulations. One positive development in this area has been the recent provision of riot-control equipment to the National Civil Police. In addition, their delay and indecision in addressing this type of situation must be overcome; the political authorities have yet to provide the police with guidelines on this issue.

2.5 Cases of human rights violations by the National Civil Police

53. From the results of the verification of individual cases of alleged violations carried out, in close cooperation, by the Office of the National Counsel and ONUSAL it was observed that during the period covered by this report, there were some isolated cases of serious violations of the right to life and the right to physical integrity by members of the PNC. It was disturbing to note a negative trend in the magnitude of these violations, whether because of their gravity, the rank of the police involved, or the action taken by some PNC members to derail or delay the investigations. Nevertheless, it should be pointed out that this situation has not recurred in the last three months covered by this report and that the latest trend appears to confirm an improvement in the situation. Some of the cases are summarized below.

54. On 4 November 1994, Nelson Arnulfo Pineda Sosa, a minor, was killed by PNC members while riding in a vehicle through the city of San Miguel with his friend Melvin Reynaldo Díaz, who was wounded. According to the police version, two officers attempted to search a suspicious vehicle, but the occupants drove off. When they began to pursue it, the police saw the driver put his hand out of the window of the vehicle, holding an object that they could not identify. Shortly afterwards, the driver of the vehicle stopped and tried to throw the object he was carrying towards the police. The police then fired warning shots and realized that the driver was holding a hand grenade. However, the judge in the case found that the grenade in question had been in storage at the PNC unit since 17 September. The police involved were brought before the competent court, at which time the police unit informed the PNC Director-General that the policemen had placed the grenade in the victim's vehicle to justify their actions. Inexplicably, the Criminal Chamber of the first eastern section ordered the release of the sergeant who had been in command of the patrol.

55. On 11 November 1994, in the city of San Miguel, two PNC officers shot and wounded Victor Manuel Portillo in the back, causing his death. At the time of the incident, according to ONUSAL verification, there was no warrant for the victim's arrest, nor was there any indication that he was committing a crime or misdemeanor. The judicial investigation discounted the police version, which claimed that Portillo had shot at the police. According to an eyewitness, the police fired from their vehicle at Portillo's back while he was running. The justice of the peace ordered the police officers detained, but when it tried to notify the accused of the order for their arrest, the court was informed that they had escaped from the holding cells of the San Miguel police unit.

56. Juan Carlos Mina was arrested on 24 September 1994 by PNC members in the hamlet of Guarnencia, Santa Ana, for allegedly being "drunk and disorderly". The complainant maintains that at no point did he resist arrest, a fact confirmed by eyewitnesses who also denied that he was causing public disturbance. ONUSAL was able to verify that the victim showed signs of having been beaten. The victim alleges that he was beaten by a PNC sergeant at the police station, while he was handcuffed and his feet were bound. This was confirmed by a witness who was also being held in the same location.

57. On 28 December 1994, Naín Enrique Bonilla, aged 17, was detained by members of the PNC Anti-Narcotics Division stationed in El Amatillo, La Unión, and accused of stealing a G-3 rifle from that Division. While he was detained, two police officers gagged him and placed a plastic bag over his head until he began to show signs of asphyxiation. The procedure was repeated three times, until the victim gave the name of another person as the author of the alleged theft. When he retracted his confession the following day, the procedure was repeated as many as seven times, and his head was even held under water. ONUSAL verification confirmed the veracity of the complaint.

58. René Morán Valiente was arrested, along with seven other people, by PNC officers from Nueva San Salvador on 26 November 1994. He alleges that he was threatened and struck on the ear with a pistol by the Deputy Commissioner in command of the La Libertad police unit. This officer had previously been accused of ill-treatment in a complaint filed with the Office of the National Counsel for the Defence of Human Rights, and his irregular conduct had already

been noted in a case submitted to ONUSAL on 11 August 1994. ONUSAL reported the situation directly to the Director-General of the PNC.

59. On 23 February 1994, in San Rafael Oriente, San Miguel, Mr. Manuel Alberto Garay died as a result of bullet wounds caused by a PNC officer. The victim was driving home late at night in a pick-up truck without licence plates, accompanied by his friend José Cruz Larín. On the way, a PNC officer signalled to him to stop, but Garay drove on at high speed, as admitted by the witness Cruz Larín. An officer then fired two shots, one of which hit Garay in the head, killing him. The police version is contradictory and there was even an attempt to distort the facts. The officer responsible for the shooting finally admitted to having lied when he initially reported the incident.

60. On 2 December 1994, employees of the Social Security Institute occupied some of its premises during a labour dispute. During the ensuing PNC intervention, police officers of various ranks acted without wearing uniforms and without showing police identification and shot into the air with their regulation weapons in an enclosed area of one of the hospitals, seriously endangering the people there. The Chief of the PNC Disciplinary Investigations Unit took part in the operation, in which people on both sides were injured.

2.6 PNC control and monitoring mechanisms

61. In the context of these incidents, it should be stressed that certain shortcomings in the functioning of the monitoring and internal control mechanisms of the PNC continue to be verified. ONUSAL noted that, as of 2 December 1994, the Office of the Attorney General of the Republic reported having instituted criminal proceedings in 71 cases against PNC members for their alleged participation in criminal acts, most of which had occurred during 1994. By that date, the Disciplinary Investigations Unit had initiated disciplinary proceedings in only eight of those cases. ONUSAL expressed its concern at this situation to the PNC Director-General, a fact which helped to set in motion internal disciplinary action in some of the cases.

62. By the same date, the Disciplinary Investigations Unit had received notification of 506 cases against PNC members, with investigations pending in 430 cases, most of them for minor misdemeanours. By 2 March 1995 the Unit was processing 780 cases, of which 116 related to serious or very serious misdemeanours. The Disciplinary Unit's lack of urgency in investigating cases submitted to it, especially those concerning serious human rights violations such as arbitrary executions, torture or ill-treatment, prompted ONUSAL to ask the Office of the PNC Director-General for information on the status of investigations into cases which had been positively verified by the Human Rights Division. Following that communication, the Vice-Ministry of Public Security and the Office of the PNC Director-General gave a public undertaking to solve all the serious cases under investigation as quickly as possible. The same authorities also indicated that they would reform the internal disciplinary system in order to streamline and improve procedures.

63. The shortcomings identified indicate that such a reform is necessary. Solutions should include the assignment to the Unit of properly trained

management personnel and also the corresponding resources. The leadership of the Disciplinary Investigations Unit changed at the end of March.

64. Similarly, the structure and procedures of the PNC Disciplinary Tribunal should be such as to promote the dispatch and efficiency required by its important function. As of 2 March 1995, the Tribunal was dealing with 26 complaints, 18 of which corresponded to a list of serious cases submitted by ONUSAL. Measures to improve internal control procedures could include amendment of the disciplinary regulations in order to decentralize disciplinary authority within the PNC, extending the competence of its senior departmental officers to handle cases involving minor misdemeanours, so that the Tribunal can deal with cases which seriously compromise the PNC, in particular with respect to human rights.

65. Together with these internal control mechanisms, the peace agreements gave the PNC an external monitoring mechanism in the person of its Inspector-General, whose function is essential for guaranteeing respect for legality in police action. Although the Inspector-General was appointed six months ago, his powers were not clearly defined, which made his work highly ineffective. On 31 March, the Inspector-General was removed from his post.

2.7 Criminal investigation

66. Furthermore, PNC criminal investigation activities have not been developed. In units deployed throughout the country, almost no investigatory activity is taking place, since of the 15 per cent of the entire force assigned to investigation duties, 75 per cent are performing duties within units and not in the field. In addition, there is a severe shortage of equipment and resources for the conduct of criminal investigations, and in the period covered by verification the PNC began investigations in only 22 per cent of the cases brought to its attention by tip-offs or complaints from the population. It was also noted that police investigation proceedings are minimal, generally being confined to the certificate of inspection, the statement by the plaintiff and statements by witnesses, where these exist. Proceedings involving some kind of investigative activity by the PNC are practically non-existent. One constant is the absence of any police account of the events, which emerge only from the complainant's statement recorded verbatim in the extrajudicial proceedings. On other occasions, it was observed that even though there is no record of events, the acts in question are deemed legally actionable, without, however, any evidence being submitted to the judge. This is the normal situation in instances of committal for petty offences.

67. These deficiencies in the conduct of investigations have a negative impact on judicial proceedings, since the courts and the Office of the Attorney General do not have the necessary evidence to proceed, all of which helps to perpetuate impunity. This situation, combined with the fact that more than half of arrests are for petty offences, such as being drunk and disorderly or brawling, and not for crimes, indicates that the PNC is not focusing its attention on combating serious crimes.

68. In the special case of the Criminal Investigation Division, which has primary responsibility for investigating more serious crimes, the Division has achieved few positive results, particularly in cases referred to it for investigation by the Joint Group for the Investigation of Politically Motivated Illegal Armed Groups. Furthermore, its investigation of the murder of FPL-FMLN leader David Fausto Merino Ramirez ("Franco"), on 10 November 1994, reveals an almost inexplicable degree of inefficiency. This confirms the need, already indicated in this report, to strengthen the special unit responsible for the investigation of politically motivated crimes.

2.8 Violence against women

69. The incidence and extent of gender violence in El Salvador are assuming significant proportions. In 1994, there was an increase in the number of complaints: the Institute of Forensic Medicine reported 726 cases of sexual offences against women between January 1994 and January 1995, as well as 765 cases of domestic violence, of which 634 involved violence against women. Furthermore, the Department for the Protection of Women and Children of the Office of the Attorney General reported a total of 1,404 offences against women, of which 886 were classified as cases of ill-treatment and 246 as rape.

70. This increase in reported cases may in part reflect an increased awareness on the part of women, who are gradually overcoming the fear and shame involved in publicly reporting cases of violence against them and are beginning to place their trust in institutions for the protection and defence of women, which are offering greater institutional support through more organized responses by both the governmental and the non-governmental sectors. Other important indications of greater awareness are a Legislative Assembly decree establishing 25 November as End Violence against Women Day and the bill to prevent domestic violence, submitted by the Office of the National Counsel for the Defence of Human Rights in collaboration with women's organizations, which should be adopted by the Legislative Assembly.

71. In this context, mention should be made of the preventive efforts being made by various private women's groups to increase protection for the family, schools and other institutions that transmit and shape conducts in an attempt to break the cycle of discrimination and violence against women. It is also extremely important to involve the PNC in efforts to eradicate violence against women, by incorporating human rights issues into training curricula and establishing authorities responsible for dealing with victims.

3. Administration of justice

72. One fundamental aim of the peace agreements is to guarantee the independence of the institutions responsible for the administration of justice vis-à-vis other State authorities, establishing the requisite conditions for them to discharge their functions with impartiality, transparency and efficiency.

73. When ONUSAL began operations in El Salvador, the system for the administration of justice required a complete overhaul. The most serious problems identified at that time were the lack of independence and autonomy of judicial action, the existence of obvious signs of corruption, the inefficiency of constitutional justice, the absence of proper professional training for the judiciary, the existence of obsolete laws, the lack of guarantees and recurrent violations of the rules of due process.

74. The Commission on the Truth drew attention to "the tremendous responsibility which the judiciary bears for the impunity with which serious acts of violence (...) occurred" 2/ and agreed with ONUSAL on a series of recommendations designed to extend the reforms already envisaged in this area by the peace agreements. These agreements and recommendations constitute a set of commitments which must be complied with fully.

3.1 Modernization of the judiciary

75. Together with the constitutional and legislative reforms established by the peace agreements, the creation of a new and efficient system for the administration of justice calls for the programming and implementation of measures to modernize and raise the professional standards of the judiciary, which, in keeping with the new democratic legality that supports it, would make it possible for new judicial practices to become firmly entrenched. The conformation of the new Supreme Court of Justice in accordance with the new election mechanism established by the peace agreements, which guarantees its broad representative nature and contributes to its independence, has in this regard been a determining factor in advancing this modernization process.

76. The new Supreme Court of Justice has made public its intention to modernize the judicial system, eradicate corruption, train judicial officials, prevent delays in legal proceedings and contribute to the effectiveness of social protection mechanisms and auxiliary bodies. The objective of all these measures is to bring the administration of justice into line with the new democratic reality and ensure an end to impunity. The Court's Constitutional Chamber set a clear example of its new orientation in one of its first important decisions, which was based on article 144 of the Constitution establishing the primacy of treaties - such as human rights instruments - over the ordinary laws of the Republic. 3/

77. In view of the great number of administrative matters with which the new Supreme Court of Justice has had to contend, one very positive development has been the establishment, on the initiative of the Court, of a commission composed of judicial and administrative personnel to study and propose measures on the structural and procedural problems that arise.

78. The new Court has also had to deal with a great number of pending cases. This has resulted in delays that impair the enjoyment of human rights. For example, on 18 June 1994, a municipal ordinance prohibiting the staging of public demonstrations on working days entered into force in San Salvador. Various organizations immediately applied to the Court for amparo, claiming that the measure would violate the right of peaceful assembly, a view shared by the

Human Rights Division (A/49/281-S/1994/886, paras. 43 and 44). Eight months later, the Constitutional Chamber has not ruled on the matter and the measure remains in force, hanging like a sword of Damocles over social organizations, several of which have been fined for disobeying the ordinance.

79. Another measure that the Court intends to promote is the revitalization of the training of judges and associated personnel through the Judicial Training School. ONUSAL has evaluated various training activities and has expressed great concern at finding that judges and prosecutors lack basic preparation in many areas, especially in international human rights law, and - what is even less understandable - are unaware of and are not applying the norms of the Constitution of El Salvador. This ignorance of norms is compounded by deficiencies of legal interpretation and reasoning, as evidenced in the literal and disjointed application of ordinary law and a marked emphasis on procedural - as opposed to substantive - issues. Serious shortcomings have been found, including the lack of such elementary skills as the ability to summarize or to formulate statements, which arises both from difficulties in determining the relevant facts and from a lack of practice in analytical reasoning.

80. This points to the need to strengthen the School's capacity for training judges and to develop programmes of professional training in human rights. In addition to the purification of the judiciary, far-reaching measures must be taken to improve the basic qualifications of its members and thus improve their reasoning skills. The implementation of systematic, planned programmes in this area requires all the support that the international community can give. One positive development has been the recent appointment of Mr. José Albino Tinetti, an eminent lawyer, as Director of the School.

81. One of the basic tasks of the new Court has been to undertake the purification of the judiciary, a measure that, in addition to being envisaged in the peace agreements and in the recommendations of the Human Rights Division and the Commission on the Truth, is urgently demanded by Salvadorian society. In this regard, the Court has taken a number of steps, and has sacrificed the speed demanded of this process, in order to take all necessary precautions to ensure that the purification is carried out in strict compliance with due process and in accordance with the relevant provisions of the Basic Principles on the Independence of the Judiciary adopted by the United Nations. As of March 1995, the purification had involved the dismissal of a judge of a court of second instance, four judges of courts of first instance and a justice of the peace, and the suspension of three justices of the peace for 60 days. This process has been supplemented by the Court's establishment of a Judicial Investigation Department, whose function is to ensure the integrity of the judiciary.

82. The Department, which will become operational on 1 April 1995, has a chief, two assistants, 15 support staff and two vehicles. Files for each of the country's judges will be opened immediately with a view to drawing up a list of the complaints that are received. This effort by the Court obviously needs to be strengthened through the early adoption of regulations and the broadening of its coverage so that complaints can be received nation wide, since at present they are received only on the premises of the Supreme Court of Justice.

83. This process is also being supplemented by the annual evaluation of judges and magistrates by the National Council of the Judiciary. The Commission on the Truth recommended that only those judges who, according to a rigorous evaluation made by the Council, have demonstrated their judicial aptitude, efficiency and concern for human rights and offer every guarantee of independence, judicial discretion, honesty and impartiality in their actions may remain in the career judicial service.

84. The first evaluation, carried out by the Council in June 1994, encountered serious difficulties, such as a lack of precedents, financial resources, trained personnel and adequate facilities, a suspicious and negative attitude on the part of some officials, lack of cooperation, administrative disorder in the courts and fear of clients and litigants, which prevented them from answering objectively. For the second evaluation of judges of courts of first instance, carried out in February 1995, the Council systematized the evaluation criteria (number of sentences, respect for time-limits, efficiency and speed, decisions that might reveal negligence or ignorance, penalties imposed by superiors, general turnover of the court, punctuality, order and discipline) and developed a set of personal files and other records. This evaluation adheres strictly to the norm contained in the Act of the Council, but does not allow sufficient room for other evaluation criteria, such as concern for the human rights of the accused or the victims, the judge's contribution to the development of legal science, personal training, quality and not just quantity of judgements passed, and so on.

85. Another important issue that the new Supreme Court of Justice is dealing with, through its Criminal Chamber, is the complex problem of the prison system and unconvicted prisoners, a situation for which, as ONUSAL has continually pointed out, a prompt and viable answer must be found. There were various reasons for the prison violence that began in early 1994. One was the delay by judges in conducting trials.

86. Immediately after its establishment, the Criminal Chamber created the Department for Reducing the Number of Unconvicted Prisoners. A census was conducted of the prison population whose cases were still pending, in order to enable the Department, at any given moment, to monitor the status of cases. In addition, judges were requested to provide information on their most recent decisions in trials to which they were assigned so that delays and progress in such proceedings could be monitored. Thanks to the official notes that were sent requesting monthly reports on all court activities, satisfactory results were achieved, since it was also possible to establish how each court operated and how long it took to reach a decision. The Chamber also requested the organization of prison visits as required by law under article 692 of the Code of Criminal Procedure, which led a great number of judges to visit detention centres. Moreover, a form for calculating the sentence has been prepared which has made it possible to increase the number of convicted prisoners. So far, this effort has covered 40 per cent of all courts dealing with criminal cases, and serous delays (up to five years) in their work have been revealed.

87. In this area of activities, in March 1995, the Ministry of Justice completed its preparation of draft amendments to the code of Criminal Procedure, pending the entry into force of the new code, altering the traditional

orientation of pre-trial detention and release from custody and the way in which pre-trial investigations are handled in order to prevent delays in the administration of justice and an increase in the number of unconvicted prisoners. The draft amendments propose, inter alia, reducing from 120 to 30 days the period by which the pre-trial investigation can be extended, tightening the requirements for ordering pre-trial detention, making it possible to appeal the judge's decision, extending eligibility for release from custody to persons accused of crimes carrying a maximum sentence of eight years, as opposed to the three years previously stipulated, incorporating new precautionary measures that may or may not be combined with release from custody and establishing lenient retroactive effects for detentions ordered before the decree entered into force.

88. The Constitutional Chamber of the Court, for its part, has been drawing attention to the need to reduce the use of pre-trial detention, maintaining that, under international human rights law, pre-trial detention should never be the general rule in criminal proceedings ... but that there should be a specific determination by the judge in each case ... and that it can only be justified to the extent that it is indispensable and necessary for the protection of essential legal interests. 4/

89. Meanwhile, a serious problem faced by the Court has been the shortage of defence lawyers, as a result of which proceedings are declared mistrials. This problem has been particularly serious in some cases of persons detained for organized crime, who have been released. In view of this situation, during the month of February 1995 the Criminal Chamber of the Court, with the cooperation of the Ministry of Justice and ONUSAL, convened all El Salvador's judges of courts of first instance and justices of the peace to study and propose some guidelines for action in such cases.

90. Furthermore, in order to improve working relations among judges, police officers and prosecutors and make some suggestions, ONUSAL has drawn the Court's attention to a number of irregularities, such as the absence of judicial monitoring of the activities of the municipal police, the unavailability of justices of the peace at weekends, the lack of a better system for judicial monitoring of the enforcement of judicial arrest warrants by the National Civil Police, the difficulties faced by the authorities in obtaining defence lawyers for trials, and the absence of a relationship between judges and the police which would enable judges to provide guidance to PNC members on how to conduct pre-trial criminal investigations. It has also reported problems between prosecutors and police officers caused by the fact that the Attorney General's Office lacks real operational control over PNC units (the Office needs to issue instructions on their operational activity).

3.2 Legislative reforms

91. A number of commitments in the area of the administration of justice must be given substance in constitutional and legislative reforms. Currently, the Legislative Assembly has the greatest responsibility for putting such reforms into practice by studying them and approving them as rapidly as possible. It is disturbing that the constitutional reforms approved in first reading in

April 1994 by the previous Assembly have not been ratified by the current Assembly. Some of these commitments are referred to below.

(a) The Supreme Court of Justice

92. The constitutional reform adopted in the peace agreements established a new organization of the Supreme Court of Justice and a new procedure for the election of its judges, with a view to promoting genuine independence and autonomy in the judiciary. The agreements also introduced the requirement that a justice of the peace must be a qualified lawyer, which led to a massive replacement of El Salvador's justices of the peace.

93. The Commission on the Truth recommended a decentralization of the functions of the Supreme Court of Justice, and of its President in particular, as the body which heads the judiciary, since that concentration of functions was seriously undermining the independence of lower court judges and lawyers. This recommendation, which aims in the first place to transfer from the Supreme Court of Justice to the National Council of the Judiciary the power to appoint and dismiss judges and magistrates, requires a constitutional reform which, since it was not included in the reforms approved in first reading on 29 April 1994 by the previous Legislative Assembly, has been greatly delayed.

94. Secondly, it recommended that an independent body should be given competence to authorize and suspend the professional activities of lawyers and notaries; that competence is currently vested in the Supreme Court. The constitutional reform initiated in April 1994 partially implemented this recommendation since it eliminated the Supreme Court's power to suspend lawyers and notaries, which would henceforth come within the competence of the National Council of Lawyers and Notaries. In the current reform, however, the Court retains the power to authorize the professional activities of lawyers and notaries.

(b) The National Council of the Judiciary

95. The Mexico Agreements provided for a restructuring of the National Council of the Judiciary so that its composition would guarantee its independence from the organs of State and from political parties. It was also agreed that the National Council of the Judiciary would be responsible for organizing and operating the Judicial Training School.

96. In order to safeguard the Council's independence, the Commission on the Truth recommended that the system for the dismissal of its members be changed so that it would be put into effect only for precise legal causes and with the favourable vote of two thirds of the members of the Legislative Assembly. This recommendation was included in the amendments to the National Council of the Judiciary Act and also in the constitutional reforms initiated in April 1994.

97. The Human Rights Division and the Commission on the Truth both recommended improvements in the system for the composition of the Council, so as to eliminate the shortcomings which increase its dependence on political parties, and in the powers of the Council, so as to ensure quality and objectivity in the selection of candidates to be justices and judges. They also recommended that

the independence of the Judicial Training School should be enhanced and that more rigorous rules should be adopted to ensure a steady improvement in the professional training of judges and other judicial officials. These recommendations have yet to be put into effect.

(c) The career judicial service

98. The peace agreements established that the secondary legislation should contain provisions to ensure that admission to the career judicial service would be based on mechanisms guaranteeing objective selection, equal opportunities for all candidates and the selection of the best-qualified candidates, which should include competitive examinations and attendance at the Judicial Training School. The partial amendments made to the Career Judicial Service Act in 1992 were very superficial and did not establish clear criteria in that respect. Fulfilment of the commitments made requires a total overhaul of the career judicial service, which involves the adoption of a new law regulating it, and that has yet to happen.

(d) Constitutional justice

99. In order to provide citizens with greater access to constitutional guarantees, the Human Rights Division and the Commission on the Truth recommended that judges of courts of first instance and justices of courts of second instance be granted authority to try and to rule in cases of habeas corpus and amparo, and that the procedures for such cases be made more flexible.

100. The constitutional reform currently in process expands the scope of habeas corpus to include detainees' rights to dignity and to physical, psychological and moral integrity, assigning jurisdiction as follows: the Supreme Court of Justice will examine applications for habeas corpus in pre-trial proceedings against senior Government officials and review lower court decisions denying applications for habeas corpus; criminal courts of second instance will consider habeas corpus cases involving court-ordered detentions, while courts of first instance will consider habeas corpus cases relating to administrative detentions or arrests by individuals. This constitutional formula, which in principle would be satisfactory, should be supplemented by a better regulation of habeas corpus in the secondary legislation, so as to permit its speedy application to protect personal freedom and integrity, which is its essential goal.

101. In this respect, the Ministry of Justice has drafted a very positive preliminary bill which provides for the elimination of executing officers, the ensuring of adversary proceedings through the involvement of the parties in the relevant hearing, a decision on the case within 24 hours by the judicial authority which conducts the oral hearing, the possibility of disputing that decision, exemption from formal requirements, intervention by the Office of the National Counsel for the Defence of Human Rights, and disciplinary and criminal penalties for officials who do not present the detainee or attend the oral hearing and for judicial authorities which wilfully exceed the legal time-limits.

102. The recommendation concerning amparo was disregarded. When the current constitutional reforms are ratified, jurisdiction will remain vested in the

Supreme Court and will be distributed among its four chambers, depending upon the subject-matter, an arrangement which, moreover, does not seem the most appropriate from a technical standpoint.

(e) Guarantees of due process

103. The recommendations on expanding the guarantees of due process represent a significant advance in the constitutional reform awaiting ratification by the current Assembly. This reform recognizes the absolute nature of the right to defence, invalidates extrajudicial confessions, reduces the maximum period of detention for administrative offences from 15 to 5 days and provides that it can be replaced by community service, and grants the right to compensation for delays of justice, establishing the principle of the individual responsibility of the official and the subsidiary responsibility of the State.

(f) Criminal legislation

104. The peace agreements and the recommendations of the Human Rights Division and the Commission on the Truth establish a set of commitments in the area of criminal law and procedure; the adoption of the new codes, which is expected over the next few months, is critical for their implementation. The drafts submitted by the Government to the Legislative Assembly satisfy most of these obligations, such as invalidating extrajudicial confessions, strengthening the exercise of the right to defence and the presumption of innocence, classifying torture and enforced disappearances as crimes, incorporating regulation of the conduct of law enforcement officials in terms of ensuring respect for human rights, establishing a system of information on detainees, determining penalties for those who violate the maximum time-limits for police and judicial detentions, and defining the restrictions as to which officials are authorized to issue and carry out administrative detention orders and for what reasons.

105. Other commitments in this area are not included in the draft codes and some of them may be fulfilled only through constitutional amendments which have not been envisaged either. These include restricting administrative detention, fixed at a maximum of 72 hours under the Constitution, and eliminating the power of the administrative authorities to impose penalties involving deprivation of liberty.

(g) Arbitrary detention for petty offences

106. With a view to abolishing the practice of arbitrary detention for petty offences, it was recommended that the former Police Act of 1886 be repealed, that jurisdiction over petty offences should be transferred to the judicial authorities and that the powers and functions of the municipal police be expressly regulated. The Ministry of Justice is working on a draft for repeal and the establishment of a regime of breaches of public security.

3.3 International instruments

107. On 30 March, the Legislative Assembly, on the initiative of the Government and in compliance with the recommendations of the Commission on the Truth, ratified two international instruments of paramount importance. One was the Optional Protocol to the International Covenant on Civil and Political Rights, an instrument which gives victims of violations, once domestic jurisdictional remedies have been exhausted, the opportunity to bring complaints before the United Nations Human Rights Committee. This is possibly the most important protection mechanism afforded by the treaties in force in the context of the United Nations system. The Additional Protocol to the American Convention on Human Rights in the Area of Economic, Social and Cultural Rights (the "San Salvador Protocol") was also ratified.

108. Another important advance was recognition of the jurisdiction of the Inter-American Court of Human Rights, the sole international tribunal of the inter-American system for the protection of human rights. All the other Central American countries and more than 17 other countries in the Americas had already recognized the Court's jurisdiction.

109. During nearly four years of ongoing and direct international verification of human rights in the country, El Salvador demonstrated to the international community that the State's sovereignty is enhanced by the determination to respect and promote human rights within its borders. Now, with the imminent withdrawal of ONUSAL and the termination in March of 14 years of supervision by rapporteurs and experts of the United Nations Commission on Human Rights, the Legislative Assembly's action reflects its confidence that internal protection mechanisms will be able to resolve any human rights violations satisfactorily, while at the same time reaffirming the Assembly's intention to ensure that international protection will be able to operate as and when required.

110. In order to comply fully with aspects of the binding recommendations of the Commission on the Truth relating to international protection of human rights, it will be necessary to lift the reservations to the United Nations Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment which deny competence to the Committee against Torture to conduct investigations into systematic violations and adopt findings in that regard. It would also be appropriate to authorize the Committee, under the terms of the aforesaid Convention, to receive communications alleging violations of integrity of person. Also awaiting ratification are International Labour Organization Conventions Nos. 87 and 98 on protection of freedom of association and the Convention on the Non-Applicability of Statutory Limitations to War Crimes and Crimes against Humanity.

III. CONCLUSIONS AND RECOMMENDATIONS

111. On 26 July 1991, the ONUSAL Human Rights Division was established in El Salvador with a mandate to intervene *in situ* in the human rights situation and to propose such measures as it deemed appropriate for ensuring respect for and protection of human rights. What was involved was the most extensive human rights verification operation ever undertaken in any country with the support of

the international community, and a process unprecedented in the history of United Nations peace-keeping operations.

112. Looking back, as ONUSAL comes to an end, it can be said that, together with the democratization of the country and the gradual institution-building which supports it, the human rights situation in El Salvador has, despite its vicissitudes and fragility, improved significantly. That is mainly to the credit of the Salvadorian people, who opted for building the rule of law by means of dialogue and understanding. The verification conducted by ONUSAL during the six months covered in this report confirms that trend.

113. On various occasions, the Human Rights Division expressed its concern at the delays in ratification of the remaining international human rights treaties, especially as the end of the peace-keeping operation was in sight. In that connection, the approach taken by the Government and the Legislative Assembly in ratifying, on 30 March 1995, international instruments of paramount importance and recognizing the jurisdiction of the Inter-American Court of Human Rights is commendable. These actions have helped to strengthen the human rights protection system in the country.

114. The change in the human rights situation must now be consolidated and sustained over time. To that end, it is essential to strengthen El Salvador's new democratic institutions, ensuring that they provide the population with effective protection and full enjoyment of its rights and eradicating impunity, which is still a latent reality in El Salvador. In addition to the implementation of the remaining peace agreements, the proper functioning of the system for the administration of justice, the National Civil Police (PNC) and the Office of the National Counsel for the Defence of Human Rights is the most immediate and obvious challenge.

115. These unfinished aspects of the peace agreements will be subject to monitoring and verification by the United Nations, in implementation of the mandate entrusted to it by the parties, through the establishment on 1 May, for a period of six months, of a verification and good offices mission which will keep the Secretary-General informed of the situation on an ongoing basis.

116. Recently, the new Supreme Court of Justice has begun to put into practice its proposals for modernizing the judiciary, eradicating corruption, training judicial officials, avoiding delays in the administration of justice and contributing to the effectiveness of auxiliary judicial bodies, taking action to eliminate its backlog of administrative matters and cases pending, revitalizing judicial training through the Judicial Training School and solving the prison crisis. The Court has also begun purification of the judiciary, although at a slower pace.

117. Some aspects of transforming the administration of justice still require the support of the international community. ONUSAL again urges the bilateral and multilateral cooperation agencies to contribute at this stage of consolidation of the process. With the United Nations Development Programme, various cooperation projects have been drawn up which envisage support for, inter alia, the training of judges, prosecutors and court-appointed counsel, the inauguration of the Penitentiary School and the dissemination of national and

international human rights norms. Projects to support the consolidation of the PNC, in particular, the strengthening of its oversight bodies and the enhancement of its criminal investigation capacity, have also been drawn up. Other projects are aimed at strengthening non-governmental human rights organizations.

118. One of the greatest challenges for El Salvador at the present time is to find immediate solutions to the pressing needs created by the increase in crime while pursuing the unavoidable task of redefining and putting into practice a new doctrine of public security which, because of its programmatic elements, is evolving at a slower pace. It is essential for the responses to crime to remain strictly within the framework of the Constitution and the peace agreements; this can be done by supporting and strengthening the National Civil Police as the sole police force with nationwide responsibility for preserving peace, law and order and public tranquillity, and by strictly observing the exceptional nature of the use of the armed forces for such purposes.

119. Active verification has made it possible to detect the persistence of various deficiencies in the National Civil Police. These include the weakness of investigation mechanisms, lack of coordination between the police force and judges, the Public Prosecutor's Office and the Office of the National Counsel for the Defence of Human Rights, and lack of knowledge about or application of various legal procedures. Added to these deficiencies is the ineffectiveness of the Office of the PNC Inspector-General, despite the fact that the Government has provided it with the resources it requires for the performance of its tasks, and of the PNC Disciplinary Investigations Unit in processing cases.

120. In the recent past, the country has witnessed a number of public demonstrations. The fact that such demonstrations have taken place is an expression of the democratic breakthrough that has occurred. Nevertheless, some of these demonstrations have gone beyond the limits of peaceful protest. Such situations have revealed the weaknesses of the PNC in handling crises, which have been inadequately controlled and, on some occasions, defused with unjustifiable violence. Beyond the need to provide riot-control equipment, which was noted during this period, the PNC must have better preparation in the proportionate and gradual use of coercive methods.

121. The withdrawal of ONUSAL from the country poses for the Office of the National Counsel for the Defence of Human Rights the tremendous challenge of being the only official institution responsible for directly guaranteeing respect for and protection of human rights. That confers on it a very high level of responsibility since, with the completion of its establishment phase, it must now attend to the strengthening of its protection mechanisms and the full exercise of its broad constitutional and legal powers. The Office must improve its method of formulating, issuing and monitoring resolutions, review the system of management of its departmental branches and their relationship to headquarters, exercise more effectively its capacity for resolving crises and place greater emphasis on the verification of situations of special importance for human rights, such as public security, labour issues and the prison system. It would now also be appropriate for the Office to have greater input into initiatives and legislative studies and increased power to lodge appeals.

Notes

1/ At the same time, the Commission requested the United Nations High Commissioner for Human Rights to facilitate the implementation of a technical cooperation agreement on human rights between the Centre for Human Rights and the Government of El Salvador.

2/ "From Madness to Hope: Report of the Commission on the Truth for El Salvador", p. 189.

3/ Case of Joaquín Villalobos Huezo, Constitutional Chamber of the Supreme Court of Justice, 17 November 1994; reprinted in Foro Judicial (FESPAD), December 1994, p. 4.

4/ Case of Joaquín Villalobos Huezo, op. cit.